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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
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11 ROBERT ANDREW HREHA, ) Case No. SACV 19-0192-JFW (JPR)  
12 Plaintiff, )  
13 v. ) ORDER DISMISSING COMPLAINT FOR  
14 ORANGE COUNTY DISTRICT ) FAILURE TO PROSECUTE AND FAILURE  
15 ATTORNEY et al., ) TO STATE A CLAIM  
16 Defendants. )

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17 On January 22, 2019, Plaintiff, an inmate at the Central  
18 Men's Jail in Orange County, filed in the Southern District of  
19 California a civil-rights action under 42 U.S.C. § 1983. The  
20 case was transferred to this District on January 31, 2019, and he  
21 was subsequently granted leave to proceed in forma pauperis. His  
22 claims arise from his August 2018 arrest and ongoing detention on  
23 unspecified charges.

24 On February 26, 2019, after screening the Complaint under 28  
25 U.S.C. §§ 1915(e)(2) and 1915A, the Court dismissed it with leave  
26 to amend because, among other deficiencies, it failed to state  
27 any claim upon which relief could be granted. Plaintiff was  
28 ordered to file an amended pleading no later than March 26, 2019,

1 and was warned that failure to do so could result in dismissal of  
2 his lawsuit for the reasons stated in the dismissal order or for  
3 failure to diligently prosecute.

4 To date, Plaintiff has not filed an amended complaint,  
5 requested an extension of time to do so, or otherwise responded  
6 to the dismissal order in any way. The dismissal order was sent  
7 to his address of record and was not returned as undeliverable.

8 Carey v. King, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (per  
9 curiam), examined when it is appropriate to dismiss a pro se  
10 plaintiff's lawsuit for failure to prosecute. See also Link v.  
11 Wabash R.R., 370 U.S. 626, 629-30 (1962) ("The power to invoke  
12 [dismissal] is necessary in order to prevent undue delays in the  
13 disposition of pending cases and to avoid congestion in the  
14 calendars of the District Courts."). A court must consider "(1)  
15 the public's interest in expeditious resolution of litigation;  
16 (2) the court's need to manage its docket; (3) the risk of  
17 prejudice to the defendants; (4) the public policy favoring  
18 disposition of cases on their merits[;] and (5) the availability  
19 of less drastic sanctions." Carey, 856 F.2d at 1440 (citation  
20 omitted). Unreasonable delay creates a rebuttable presumption of  
21 prejudice to the defendants that can be overcome only with an  
22 affirmative showing of just cause by the plaintiff. See In re  
23 Eisen, 31 F.3d 1447, 1452-53 (9th Cir. 1994).

24 Here, the first, second, third, and fifth Carey factors  
25 militate in favor of dismissal. In particular, Plaintiff has  
26 offered no explanation for his failure to file an amended  
27 complaint. Thus, he has not rebutted the presumption of  
28 prejudice to Defendants. No less drastic sanction is available,

1 as the Complaint fails to state a claim and should not be ordered  
2 served; as a result, the Court is unable to manage its docket.  
3 Although the fourth Carey factor weighs against dismissal – as it  
4 always does – together the other factors outweigh the public's  
5 interest in disposing of the case on its merits. See Ferdik v.  
6 Bonzelet, 963 F.2d 1258, 1261-62 (9th Cir. 1992) (as amended)  
7 (upholding dismissal of pro se civil-rights action for failure to  
8 timely file amended complaint remedying deficiencies in caption);  
9 Baskett v. Quinn, 225 F. App'x 639, 640 (9th Cir. 2007)  
10 (upholding dismissal of pro se civil-rights action for failure to  
11 state claim or timely file amended complaint).

12 **ORDER**

13 Accordingly, this action is dismissed for failure to  
14 prosecute and for the reasons stated in the Court's February 26,  
15 2019 order.

16 LET JUDGMENT BE ENTERED ACCORDINGLY.

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18 DATED: April 23, 2019

  
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JOHN F. WALTER  
U.S. DISTRICT JUDGE

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21 Presented by:

  
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Jean P. Rosenbluth  
U.S. Magistrate Judge